

REMARKS

Applicant respectfully requests reconsideration of this application as amended.

Claims 1-27 remain pending in the application. Claims 22, 23, 24, and 25 are allowed. Claims 1, 2, 4, 11, and 14 have been amended. Claim 27 has been added. The amended claims are supported by the specification. No new matter has been added.

The specification has been amended to correct minor matters of form. No new matter has been added.

***Objections to the Drawings and Specification***

The Office Action requested correction of certain typographical errors in the specification and drawings under 37 CFR 1.84(p)(5). In response, Applicant has amended the specification and drawings accordingly. No new matter has been added.

Furthermore, the drawings were objected to under 37 CFR 1.83(a). Specifically, the Office Action states "the internal seed acting as a marker for the target volume must be shown or the feature(s) canceled from the claims(s)." Applicant respectfully reminds the Examiner that conventional features of the invention whose detailed illustration is not necessary to understand the invention do not have to be shown. Applicant respectfully submits that an illustration of the internal seed acting as a marker for the target volume is ***not necessary for understanding the invention*** (see 35 USC 113, MPEP §608.02) (emphasis added). The use of an internal seed in radiotherapy is well known to those of ordinary skill in the art and is supported in the specification, at least, on page 11 paragraph 0039. Accordingly, Applicant respectfully requests this objection be withdrawn.

Furthermore, the drawings were objected to under 37 CFR 1.83(a). Specifically, the Office Action states, "a diagnostic energy source attached to a translatable end of a second gantry must be shown or the feature(s) canceled from the claims(s)." Applicant respectfully submits a diagnostic energy source **204** is shown at least in Fig. 2A and is supported at least on page 4, paragraph 0009; page 7, paragraph 0027; and page 8, paragraphs 0028 and 0029. Accordingly, Applicant respectfully requests this objection be withdrawn.

#### ***Claims Objections***

Claim 1 was objected to as being ambiguous as it fails to set forth the required interrelationship between the first and second gantries. Applicant respectfully submits that claim 1, as amended, has overcome this objection. Therefore, Applicant respectfully request the objection to the claim be withdrawn.

#### ***Claim Rejections***

Claims 14, 15, 16, and 19 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,751,781 of Brown et al. ("Brown"). Applicant does not admit that Brown is prior art and reserves the right to swear behind the reference at a later date. Nonetheless, Applicant respectfully submits that Brown does not anticipate Claim 14 as amended, because it does not disclose each and every element as claimed.

Claim 14, as amended recites a method for applying radiation, comprising:  
positioning a diagnostic radiation source to be in alignment with a target volume;  
positioning an imager at one of a plurality of distances from the target volume to receive radiation from the diagnostic radiation source;

positioning a therapeutic radiation source to be in alignment with the target volume; and

re-positioning the imager to receive radiation from the therapeutic radiation source.

Brown discloses a radiotherapy system having a hollow body with "an inner portion 501 and an outer portion 502, the two portions being rotatable with respect to each other by appropriate mechanical interconnection" (see column 14, lines 12-15). The outer portion 502 houses the radiotherapy source 4a, 4b, which may be a 6 MeV X-ray radiation source (see column 14, lines 19-31). A KeV imaging radiation source 50 is also mounted on the outer portion 502 of the hollow body. Furthermore, the imaging device 100 is preferably mounted on bearing 106 so as to allow movement of the imaging device 100 relative to the inner portion 501 of the hollow body 50 so that movement is possible between a first position (Fig 12) in which the imaging device 100 is opposite the collimator 4d and a second position (Fig 10) in which the imaging device 100 is offset from the first position (see column 14, lines 43-51).

Brown does not disclose the limitation of "positioning an imager at one of a plurality of distances from the target volume to receive radiation from the diagnostic radiation source," as recited in claim 14. Since the imaging device 100 is mounted on the inner portion 501 of the hollow body 50, it cannot be positioned at a closer distance relative to the target volume. Rather, the imaging device may only rotate an equal distance around the target volume.

Accordingly, Applicant submits that claim 14, as amended, is not anticipated by Brown under 35 USC 102(a). Therefore, Applicant respectfully requests the rejection to

claim 14 be withdrawn. Claims 15, 16, and 19 are dependent (directly or indirectly) on claim 14 and therefore, the Applicant respectfully requests the rejection to claims 15, 16, and 19 be withdrawn, at least for the reasons stated above for claim 14.

Claims 1, 3-10, 12, 13, and 26 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,104,780 of Hanover ("Hanover") in view of U.S. Patent No. 6,325,537 of Watanabe ("Watanabe").

Applicant respectfully submits that claim 1, as amended, is not obvious under 35 USC 103(a) over Hanover in view of Watanabe. Claim 26 includes limitations similar to those described above for claim 1. Therefore, Applicant respectfully requests the rejection to claim 1 and 26 be withdrawn. Claims 3-10, 12, and 13 are dependent (directly or indirectly) on claim 1. Therefore, Applicant respectfully requests the rejection to claims 3-10, 12, and 13 be withdrawn, at least for the reasons stated above for claim 1.

Claim 17 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Brown as applied to claim 14 above, and further in view of U.S. Patent No. 6,307,914 of Kunieda et al. ("Kunieda").

As articulated above, claim 14 is patentable over Brown. Kunieda fails to show the underlying deficiencies of Brown, including the failure to disclose the limitation of "positioning an image at one of a plurality of distances from the target volume to receive radiation from the diagnostic radiation source," as claimed and discussed above. Hence, claim 17 is patentable over this combination of references. Claims 18, 20, and 21 recite

similar features to those found in claim 14 and are therefore patentable over these references.

***Allowable Subject Matter***

The Office Action indicates that claims 2 and 11 are objected to as being dependent upon a rejected base claim. Applicant respectfully submits that claims 2 and 11 have been rewritten in independent form including all of the limitations of the base claim. Therefore, Applicant respectfully requests the objection to claims 2 and 11 be withdrawn and the claims be allowed.


In conclusion, Applicant respectfully submits that in view of the arguments and amendments set forth herein, the applicable objections and rejections have been overcome. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact André Gibbs at (408) 720-8300.

If there are any additional charges, please charge our Deposit Account No. 02-2666.

Respectfully submitted,  
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